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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HUNTER KERHART, an individual,

Plaintiff,

v.

PENSKE MEDIA CORPORATION, a
Delaware Corporation; DIRT.COM, LLC, a
Delaware Limited Liability Company; THE
HOLLYWOOD REPORTER, LLC, a
Delaware Limited Liability Company; and
DOES 1-10,

Defendants.

Case No.

**PLAINTIFF'S COMPLAINT
FOR:**

1. COPYRIGHT INFRINGEMENT
2. VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT

Jury Trial Demanded

Plaintiff Hunter Kerhart, through counsel, hereby prays to this honorable
Court for relief based on the following:

JURISDICTION AND VENUE

1. This action arises under the Copyright Act, 17 U.S.C. § 101, *et seq.*
2. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331,
1338(a)-(b).

1 Plaintiff's copyrights, have contributed to the infringement of Plaintiff's
2 copyrights, or have engaged in one or more of the wrongful practices alleged
3 herein. The true names, whether corporate, individual or otherwise, of DOE
4 Defendants are presently unknown to Plaintiff, which therefore sues said DOE
5 Defendants by such fictitious names, and will seek leave to amend this Complaint
6 to show their true names and capacities when same have been ascertained.

7 9. Upon information and belief, Plaintiff alleges that each of the
8 Defendants was the agent, affiliate, officer, director, manager, principal, alter-ego,
9 and/or employee of the remaining Defendants, and was at all times acting within
10 the scope of such agency, affiliation, alter-ego relationship, and/or employment;
11 and actively participated in, subsequently ratified, and/or adopted each of the acts
12 or conduct alleged, with full knowledge of each violation of Plaintiff's rights and
13 the damages to Plaintiff proximately caused thereby.

14 **FIRST CLAIM FOR RELIEF**

15 **(For Copyright Infringement – Against All Defendants, and Each)**

16 10. Kerhart took and owns 18 original photographs that are registered
17 with the U.S. Copyright Office (collectively, the "Subject Photographs"). Copies
18 of the Subject Photographs, and their accompanying registration information, are
19 set forth in **Exhibit 1**.

20 11. Following the publication and display of the Subject Photographs,
21 Defendants (and each of them) displayed, published, reproduced, created
22 derivative works of, distributed, and/or otherwise used verbatim copies of the
23 Subject Photographs, in their entirety, on the PMC Defendants' Websites for
24 commercial purposes without license, authorization, or consent from Kerhart
25 (collectively, the "Accused Posts"). Copies of screen captures of the Accused Posts
26 are set forth in **Exhibit 1**.

27 12. Defendants, and each of them, had access to the Subject Photographs,
28 including through a Multiple Listing Service ("MLS"), a real estate listing

aggregator website (e.g., redfin.com, realtor.com, zillow.com), Plaintiff's website, an authorized licensee of Plaintiff's, an Internet search engine, and/or another third-party website.

13. Defendants, and each of them, stored, copied, displayed, published, reproduced, created derivative works of, distributed, and/or otherwise used the Subject Photographs without license, authorization, or consent from Plaintiff, including in the Accused Posts.

14. Due to Defendants' (and each of their) acts of copyright infringement, Plaintiff has suffered damages in an amount to be established at trial.

15. Due to Defendants' (and each of their) acts of copyright infringement, Defendants, and each of them, have obtained profits they would not have realized but for their infringement of Plaintiff's copyrights in the Subject Photographs. This entitles Plaintiff to disgorgement of Defendants' profits attributable to Defendants' infringement of Plaintiff's copyrights in the Subject Photographs in an amount to be established at trial.

16. Upon information and belief, Plaintiff alleges that Defendants, and each of them, have committed copyright infringement with actual or constructive knowledge of Plaintiff's rights, such that said acts of copyright infringement were, and continue to be, willful, intentional, malicious, and/or taken with reckless disregard for Plaintiff's rights.

SECOND CLAIM FOR RELIEF

(For Vicarious and/or Contributory Copyright Infringement Against PMC)

17. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this complaint.

18. PMC had knowledge of, and materially contributed to, the Accused Posts; and had the right and ability to supervise, and a direct financial interest in (and realization of profits through), Dirt's and THR's conduct alleged herein—specifically, the storage, copying, display, publication, reproduction, creation of

1 derivative works, distribution, and/or other use of the Accused Posts on the PMC
2 Defendants' Websites.

3 19. As a result of PMC's acts of contributory and/or vicarious copyright
4 infringement, Plaintiff has suffered, and will continue to suffer, damages in an
5 amount to be established at trial.

6 20. Due to PMC's acts of contributory and/or vicarious copyright
7 infringement, PMC has obtained profits it would not have realized but for its
8 infringement of Plaintiff's copyrights in the Subject Photographs. As such,
9 Plaintiff is entitled to disgorgement of PMC's profits attributable to its and Dirt's
10 and THR's infringement of Plaintiff's copyrights in and to the Subject
11 Photographs, in an amount to be established at trial.

12 21. Upon information and belief, Plaintiff alleges that PMC has
13 committed contributory and/or vicarious copyright infringement with actual or
14 constructive knowledge of Plaintiff's rights, such that said acts of contributory
15 and/or vicarious copyright infringement were, and continue to be, willful,
16 intentional, malicious, and/or taken with reckless disregard for Plaintiff's rights.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment as follows against all
19 Defendants and with respect to each claim for relief:

- 20 a. That Plaintiff be awarded Defendants' (and each of their) profits, plus
21 Plaintiff's losses, attributable to Defendants' infringements of the
22 copyrights in Subject Photographs, the exact sum to be proven at the
23 time of trial; or, if elected, statutory damages as available under 17
24 U.S.C. § 504;
- 25 b. That Plaintiff be awarded its costs and fees under 17 U.S.C. § 505;
- 26 c. That Plaintiff be awarded pre-judgment interest as allowed by law;
27 That Plaintiff be awarded such further relief as the Court deems
28 proper.

1 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ.
2 P. 38 and the 7th Amendment to the United States Constitution.

3
4 Dated: March 7, 2023

DONIGER / BURROUGHS

5 By: /s/ Stephen M. Doniger
6 Stephen M. Doniger, Esq.
7 Benjamin F. Tookey, Esq.
8 Attorneys for Plaintiff
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